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October 16, 2009

Via ECF

Magistrate Judge Tomlinson
United States District Court
Eastern Division of New York
100 Federal Plaza, Courtroom 910
Central Islip, NY 11722

Re: *Palm Bay v. Marchesi di Barolo*, Case No. 09 CV 601

Dear Judge Tomlinson:

We write to respectfully move this Court to adjourn the deadline for rebuttal expert reports set forth in the Amended Case Management and Scheduling Order from November 10, 2009, to a date three weeks after the Court rules on, and plaintiff produces, the materials sought in defendant Marchesi di Barolo, S.p.A.'s pending discovery motions. (*See* Dkt. Nos. 76 and 89.) Plaintiff Palm Bay International, Inc. opposes not consent to the requested relief.

Both of Marchesi's motions seek financial and other materials critical to Marchesi's defense of Palm Bay's damages claim. The issue has just come to the fore because Palm Bay has just produced an expert damages report in which it claims \$11.4 million in damages, the lion's share of which are for purported "lost profits" and "lost commissions," based on financial materials and data that Marchesi has requested, but Palm Bay has never produced. However, even were Palm Bay to now produce all of the materials on which its damages expert relied, that would still be only a self-selecting sample of the materials that Marchesi needs to prepare its defense. For Marchesi to have to produce a rebuttal expert damages report without this basic financial information would be both prejudicial and inequitable.

Recognizing the significance of the pending motions, the Court recently adjourned the summary judgment briefing dates, but the expert dates remain as originally scheduled. (*See* Dkt. No. 105.) Adjourning the November 10, 2009 deadline for Marchesi's expert rebuttal damages report will not delay trial. The existing Scheduling Order already contemplates depositions of expert damages witnesses continuing through January 11, 2010. Granting Marchesi three weeks to peruse Palm Bay's still-unproduced financial records before it has to serve its damages report is reasonable and can be easily accomplished within the existing trial date.

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We thank the Court for its consideration.

Respectfully submitted:

/s/

Rachael G. Pontikes

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Attachment